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August 31, 2004

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Re: *Ex Parte*, Sunset of the BOC Separate Affiliate and Related Requirements, WC Docket No. 02-112, CC Docket Nos. 00-175, 01-337, 02-33

Dear Ms. Dortch:

This letter is in response to a letter and attached presentation filed in this proceeding by AT&T on August 9, 2004, which summarizes an *ex parte* meeting that occurred on August 6, 2004 (hereinafter “AT&T *ex parte*”). AT&T first contends that BOCs dominate every market in which some providers of the retail service utilize access services, based upon a flawed analysis advanced by AT&T in its previously filed Comments in this proceeding.¹ AT&T then adds to this fundamentally flawed position a combination of selected anecdotal information and mischaracterization to argue 1) that the ILECs are engaging in improper conduct, and 2) that this conduct, combined with the BOC’s alleged power to “control” the market, has resulted in their making substantial inroads into the enterprise market.

AT&T’s argument has three flaws: One, AT&T’s theory of the BOCs’ market dominance is at odds with the reality of the enterprise market. Two, AT&T’s letter provides no credible evidence of improper conduct by BOCs and no credible evidence of BOC dominance in any market that is relevant to this proceeding. Three, AT&T’s analysis avoids entirely the fact that, in the enterprise market, AT&T and other non-RBOCs are, in fact, the dominant providers.

In the AT&T Comments referred to above, AT&T responded to the *Further Notice of Proposed Rulemaking*² with a two-pronged argument that the BOCs should be considered

¹ Comments of AT&T Corp., WC Docket No. 02-112, CC Docket No. 00-175 (filed June 30, 2003) (“AT&T Comments”).

² *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements; 2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the*

dominant providers. First, AT&T asserted that the BOCs provision of access services constitutes a bottleneck. Second, in AT&T's words, "[t]he continuing ILEC control of the local bottleneck . . . confers market power in all downstream markets irrespective of how those downstream markets are defined and allows the ILEC to raise price and restrict output in all those downstream markets."³

Thus, under AT&T's approach, the BOCs should be deemed dominate in absolutely any market in which some competitors utilize special access services, even if the reality of the market place demonstrates to the contrary. In other words, under AT&T's unique vision of competition, a BOC should be treated as controlling a "downstream market," even though the BOC has little or no market share. For example, in an illustrative "downstream" market in which AT&T has a 99 percent market share and the BOCs have a combined market share of 1 percent, the BOCs would be considered dominant under AT&T's approach. AT&T's position simply makes no sense.

AT&T's application of this position to the enterprise market is equally non-sensical. AT&T reported in its 10K Report for 2003 almost \$25 Billion of revenue from the provision of business services.⁴ Based upon the estimate that AT&T derives 76% of its total business revenue from the high end customer segment,⁵ AT&T's annual high-end revenue would be approximately \$19 Billion. In the *ex parte*, AT&T opines that BellSouth's interLATA enterprise segment "book of business" rose \$150 Million in 6 months, from \$600 Million to \$750 Million.⁶ Thus, AT&T takes the absurd position that BellSouth should be regulated as a dominant carrier even though AT&T's revenue from the national enterprise market is 25 times BellSouth's revenue.

Given the fact that AT&T's revenue from the enterprise market dwarfs the BOCs, it is not surprising that the AT&T *ex parte* avoids a discussion of comparative market share, and instead focuses on the assertion that "the BOCs have been rapidly gaining share in the

Commission's Rules, WC Docket No. 02-112, CC Docket No. 00-175, *Further Notice of Proposed Rulemaking*, 18 FCC Rcd 10914, 10915, ¶ 2 (2003).

³ AT&T Comments at 22-23 (emphasis added). Some of the reasons that this assertion is incorrect are set forth in a Declaration of William Taylor, Timothy Tardiff, and Harold Ware of National Economic Research Associates filed in this proceeding on behalf of BellSouth, Verizon and SBC ("NERA Declaration"), submitted by letter from Mary L. Henze, Asst. Vice President, Federal Regulatory, BellSouth, Michelle Thomas, Executive Director, Federal Regulatory, SBC, and Dee May, Vice President, Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 02-112, CC Docket Nos. 00-175, 01-337, 02-33 (Aug. 10, 2004).

⁴ AT&T Corp. Form 10-K for 2003 at 40, *available at* <http://www.sec.gov/Archives/edgar/data/5907/000095012304003304/y92576e10vk.txt>.

⁵ Letter from Mary L. Henze, Assistant Vice President, Federal Regulatory, BellSouth, to Marlene Dortch, Secretary, FCC, WC Docket No. 02-112, attachment at 3 (Aug. 13, 2004).

⁶ AT&T *ex parte*, n.15.

[enterprise] market.”⁷ AT&T, however, provides no support for this assertion. Instead, AT&T merely cites to information that shows that both SBC and Verizon have won customers in the enterprise market, and they believe they will win more in the future.⁸ Neither of these citations to the market activity of SBC and Verizon do anything to establish more than the fact that these two BOCs are attempting (as is BellSouth) to compete in the enterprise market. Of course, prior to the BOCs’ entry into the interLATA market, IXC’s served essentially the entire enterprise market (and they continue to do so). Thus, it only follows that, now that the BOCs have entered this market, some customers will move from AT&T, or other carriers, to the BOCs. Given this, it appears that AT&T is simply complaining about the fact that there is competition in the market.

AT&T’s contention of BOC control of the enterprise market is further rebutted by a letter filed on August 12, 2004, by the Ad Hoc Telecommunications Users Committee in response to a Commission inquiry “regarding the procurement and contracting experiences of large enterprise customers seeking interstate, interexchange telecommunications services.”⁹ The response demonstrates that services to enterprise customers are provided almost exclusively by non-BOC carriers. Specifically, the letter stated the following:

You have asked us to identify the service providers that typically participate in enterprise customers’ RFPs. For interstate, interexchange services, those providers are AT&T, MCI and Sprint plus a group of “spoilers,” meaning less-established, second tier companies who are likely to price aggressively to win the customer’s business. This group includes companies such as Broadwing, Qwest, Global Crossing, Level 3, and Wiltel. For international services, typical providers are Equant, British Telecom, and Telstra.

Enterprise customers do not often receive RFP responses from the BOCs and, when they do, the responses are typically limited in the services provided or the geographic area in which service is available. In a majority of cases, these limitations prevent the BOC from being the lead vendor in a procurement. Their role is typically limited to providing a subset of the most basic services (e.g., “plain vanilla” outbound voice) rather than the more sophisticated data applications (e.g., frame relay or MPLS) or services with a national footprint.¹⁰

Thus, the letter notes that the regional nature of BOCs’ service areas presents them with an inherent disadvantage in providing services to enterprise customers, who generally have a

⁷ *Id.* at 3.

⁸ *Id.* at 3-4.

⁹ Letter from Coleen Boothby, Levine Blaszak Block & Boothby LLP, to Michael Carowitz, Competition Policy Division, Wireline Competition Bureau, FCC, WC Docket No. 02-112, CC Docket Nos. 00-175, 01-337, at 1 (Aug. 12, 2004), submitted by letter from Coleen Boothby to Marlene Dortch, Secretary, FCC (Aug. 12, 2004).

¹⁰ *Id.* at 3.

national or international presence. The letter goes on to cite other reasons why enterprise customers typically do not purchase services from BOCs. However, these reasons are not as pertinent as the fact that AT&T and other non-BOCs are the only carriers that routinely respond to RFPs from enterprise customers. Given this, AT&T's contention that the BOCs somehow control this market, or will control this market in the near future, is absurd.

AT&T's position also ignores completely the manner in which enterprise services are typically provided. Given the nature and complexity of enterprise services, a relatively strong business relationship typically develops between the end user and the incumbent carrier that provides the retail services to them as service offerings are designed (through the Request for Proposal process) and provisioned to meet the end users needs. For this and other reasons set forth in BellSouth's August 13, 2004 *ex parte*, it is difficult to unseat an incumbent provider of enterprise services (especially data services).¹¹ The fact that BellSouth, or any BOC, provides access services that may be used by carriers such as AT&T to provide enterprise services to end users does nothing to change this fact.

Further, access services are almost always purchased by the provider of the retail service on behalf of the end user. For this reason, a BOC providing access service has no direct contact with the end user. CNPI rules also strictly prohibit a BOC from utilizing any information that it obtains by virtue of providing special access services to market its retail services to the end user. Given the lack of customer contact, a BOC providing access services as an input to the retail service faces the same obstacles in obtaining new enterprise customers as would any other competing carrier.

Finally, even if an RBOC were able to obtain an enterprise customer that is currently being served by another carrier, the resulting service change is nothing like a "switch-as-is" situation. Instead, to change service, the end user's services would have to be disconnected, reordered, and reconnected. The fact that a BOC provides access services results in no "streamlining" to the process by which an enterprise (or any) customer would change from service provided by a non-BOC incumbent to service from the BOC. Thus, the fact that a BOC provides access services as an input to the retail service that a carrier provides to the enterprise customer does absolutely nothing to assist the BOC in any way in the competition for that customer's business.

As to AT&T's allegations of BOC wrongdoing, two of these allegations relate to BellSouth, and neither should be given any credence. AT&T alleges that BellSouth has engaged in "discriminatory conduct relating to provisioning and repairing of special access circuits," and cites to its Comments filed in BellSouth's Section 272 Audit.¹² BellSouth has already responded to this criticism by AT&T in an *ex parte* filed July 9, 2004, and will not repeat its response at

¹¹ BellSouth *ex parte* at 3.

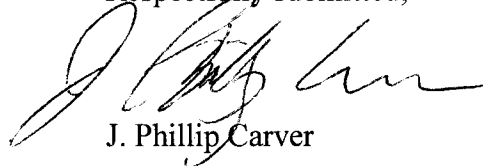
¹² AT&T *ex parte* at 5.

length.¹³ BellSouth will note, however, that BellSouth's Audit Report did not support AT&T's claim that discrimination existed. Thus, what AT&T mischaracterizes in its *ex parte* as "strong and consistent evidence of discrimination"¹⁴ is actually nothing more than a false, unsupported contention that AT&T made in the context of BellSouth's 272 Audit.

AT&T also claims that BellSouth has engaged in an "anticompetitive lockup," based on contentions it communicated in the *ex parte* contact, which relate to a complaint that AT&T recently filed against BellSouth.¹⁵ BellSouth believes that it was improper for AT&T to make an *ex parte* contact regarding the substance of a pending complaint. Therefore, BellSouth will refrain from rebutting AT&T's claims here, but will do so within the context of the pending complaint proceeding.

To summarize, AT&T argues that the BOCs should be regulated as dominant carriers in any market in which special access services are utilized by some carriers to provide the retail service. It is, however, irrational for AT&T to assert this position in the context of the enterprise market, from which AT&T draws most of its business revenues, and in which RBOCs are able to successfully compete only a small percentage of the time (as evidenced by the Ad Hoc Users' letter). AT&T's theory of BOC market dominance simply cannot be reconciled with the reality of the enterprise market. Accordingly, AT&T's position should be rejected.

Respectfully submitted,



J. Phillip Carver

cc: M. Carowitz
B. Childers
W. Cox
W. Dever
K. Jackson
W. Kehoe

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¹³ Letter from J. Phillip Carver to Marlene Dortch, EB Docket Nos. 03-197, 03-198, 03-199, 03-200; CC Docket Nos. 96-150, 96-149, 01-321 and WC Docket No. 02-112 (July 9, 2004).

¹⁴ AT&T *ex parte* at 5.

¹⁵ AT&T v. BellSouth, File No. EB-04-MD-010.